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SUBJECT: CONCERNS ON MARSHALL ISLANDS RATIFICATION OF THE
OTTAWA CONVENTION

11. (SBU) ACTION REQUEST: Post may draw on the talking points in paragraph 4 to respond to the Government of the Republic of the Marshall Island's request for the U.S. position on its potential ratification of the Ottawa Convention.

12. (SBU) Background: On December 2, 1997, PM and EAP representatives (including then PM/PDAS Eric Newsom) met with representatives from the Republic of Palau, the Republic of the Marshall Islands (RMI), and the Federated States of Micronesia at the latter three's request to discuss their potential signature/ratification of the Ottawa Convention banning anti-personnel landmines (APL). While noting that adherence to the Convention is up to each state based on its assessment of its own national interest, U.S. representatives noted that the U.S. would not adhere to the Ottawa Convention and that adherence by the other three states could conflict with defense provisions of the respective bilateral Compacts of Free Association (COFA). According to the 2008 Landmine Monitor, RMI signed the Ottawa Convention on December 4, 1997, but attended no further meetings of the States Parties until the June 2008 intersessional meetings. At this meeting, RMI explained that the Compact of Free Association with the United States complicated its ratification of the Convention. The 2008 Landmine Monitor also noted that RMI participated in an August 2008 workshop on the aims of the Convention hosted by the Republic of Palau. In June 2009, RMI made a formal inquiry to post for the U.S.'s position on its potential ratification of the Ottawa Convention (ref: Kimmel email June 25 2009).

13. (SBU) In 2007, the Republic of Palau ratified the Ottawa Convention after a long series of consultations with the United States. The Government of Palau determined that the Ottawa Convention did not conflict with the Compact of Free Association because the GOP would not be in control of any area in which the United States might use landmines in the defense of Palau under the terms of the Compact. Also the GOP stated that it would not enact its implementing legislation extraterritorially and therefore it would not apply to Palauan citizens serving in the U.S. armed forces. The government of Palau notified the Government of the United States of these understandings and intentions in advance of ratification.

End Background.

14. (SBU) The Ottawa Convention still conflicts with U.S. Landmine Policy and would therefore create conflicts with the U.S.-RMI COFA as elaborated in the following talking points. The Convention on Conventional Weapons Amended Mines Protocol (to which the United States is party) would be a better option for RMI.

Talking Points:

--We appreciate that the RMI has taken no further action

to ratify the Ottawa Convention since signing the Convention in 1997.

--The United States still is not in a position to adhere to the Ottawa Convention.

-- Each state has to make its own decision based on the assessment of its national interests. We do not oppose signature of the Convention by countries that are in a position to do so.

--However, we recognize that the defense provisions of our Compact are unique, especially the U.S. commitment to defending the Republic of the Marshall Islands as if it were part of the United States.

--Section 311 provides that the "Government of the United States has full authority and responsibility for security and defense matters in or relating to the Republic of the Marshall Islands."

-- Section 312 provides that "Subject to the terms of any agreements negotiated in accordance with sections 321 and 323, the Government of the United States may conduct within the lands, waters and airspace of the (RMI) the activities and operations necessary for the exercise of this authority and responsibility under this Title."

STATE 00091952 002 OF 002

--Section 313 provides that the "Government of the Republic of the Marshall Islands shall refrain from actions that the Government of the United States determines, after consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to the (RMI.)"

--Adherence of RMI to the Ottawa Convention would contradict the provisions of sections 311- 313 of our Compact, as it is possible that the United States could determine that the use of Anti-Personnel Landmines could be necessary to fulfill its obligations to defend RMI.

-- Section 321 of the COFA permits the United States to establish and use defense sites in RMI. Accession to the Ottawa Convention would be problematic if the United States needed to store anti-personnel landmines at these sites.

--Accession to the Ottawa Convention also affects the ability of citizens of RMI to serve in the U.S. armed forces under Compact section 341.

--The United States is committed to eliminating the harmful impact of landmines. To that end the USG has made a commitment to utilize only detectable mines and after 2010, will only use mines with a self-deactivate, self-destruct mechanism. We are also party to the Convention on Conventional Weapons, Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (CCW AMP).

--If the Government of RMI would like to join an international convention on landmines, the United States requests that the Government of RMI consider acceding to CCW AMP, rather than the Ottawa Convention in order to be more consistent with the Compact of Free Association.

IF RAISED

--If the Government of RMI is insistent on joining the Ottawa Convention, detailed consultations between the U.S. Government and the Government of RMI will be required so that both sides have a clear and complete understanding of the compatibility or incompatibility of the Compact and the Ottawa Convention.

--The Government of the United States raised these same concerns with the Government of Palau in advance of their ratification of the Ottawa Convention.

--As a result of our consultations, the Government of Palau provided certain assurances to the Government of the United States regarding their implementation of the Convention and how it would affect our relationship with them.

--The Government of Palau judged that these assurances were adequate to put them in a position to ratify the Convention.

End talking points.

15. (U) Please contact PM/WRA Katherine Baker at 202-663-0104 for more information. Please slug any follow-on cables to PM/WRA.
CLINTON